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U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIABY KN 17 DEPUTY

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15 **UNITED STATES DISTRICT COURT**
 16 **SOUTHERN DISTRICT OF CALIFORNIA**

FILED

17 **SECURITIES AND EXCHANGE
 18 COMMISSION,**

19 Plaintiff,
 20 v.
 21 GORDON C. BIGLER,
 22 Defendant.

23 Case No. **'08 CV 0888 H POR**

24 **CONSENT OF DEFENDANT
 25 GORDON C. BIGLER TO ENTRY
 26 OF FINAL JUDGMENT OF
 PERMANENT INJUNCTION AND
 OTHER RELIEF**

27 1. Defendant, Gordon C. Bigler ("Defendant") waives service of a
 28 summons and the complaint in this action, enters a general appearance, and admits
 29 the Court's jurisdiction over Defendant and over the subject matter of this action.

30 2. Without admitting or denying the allegations of the complaint (except
 31 as to personal and subject matter jurisdiction, which Defendant admits), Defendant
 32 hereby consents to the entry of the final Judgment in the form attached hereto (the
 33

1 "Final Judgment") and incorporated by reference herein, which, among other
2 things:

3 (a) permanently restrains and enjoins Defendant from
4 violation of Section 10(b) of the Securities Exchange Act of
5 1934 ("Exchange Act"), 15 U.S.C. § 78j(b), and Rule 10b-5
6 thereunder, 17 C.F.R. § 240.10b-5;
7
8 (b) orders Defendant to pay disgorgement in the amount of
9 \$41,622.78, plus prejudgment interest thereon in the amount of
10 \$4,321.66; and
11
12 (c) orders Defendant to pay a civil penalty in the amount of
13 \$41,622.78 under Section 21A(a) of the Exchange Act, 15
14 U.S.C. § 78u-1(a).

15 3. Defendant agrees that he shall not seek or accept, directly or
16 indirectly, reimbursement or indemnification from any source, including but not
17 limited to payment made pursuant to any insurance policy, with regard to any civil
18 penalty amounts that Defendant pays pursuant to the Final Judgment, regardless of
19 whether such penalty amounts or any part thereof are added to a distribution fund
20 or otherwise used for the benefit of investors. Defendant further agrees that he
21 shall not claim, assert, or apply for a tax deduction or tax credit with regard to any
22 federal, state, or local tax for any penalty amounts that Defendant pays pursuant to
23 the Final Judgment, regardless of whether such penalty amounts or any part thereof
24
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26

1 are added to a distribution fund or otherwise used for the benefit of investors.

2 4. Defendant waives the entry of findings of fact and conclusions of law
3 pursuant to Rule 52 of the Federal Rules of Civil Procedure.

4 5. Defendant waives the right, if any, to a jury trial and to appeal from
5 the entry of the Final Judgment.

6 7. Defendant enters into this Consent voluntarily and represents that no
8 threats, offers, promises, or inducements of any kind have been made by the
9 Commission or any member, officer, employee, agent, or representative of the
10 Commission to induce Defendant to enter into this Consent.

11 12. Defendant agrees that this Consent shall be incorporated into the Final
13 Judgment with the same force and effect as if fully set forth therein.

14 15. Defendant will not oppose the enforcement of the Final Judgment on
16 the ground, if any exists, that it fails to comply with Rule 65(d) of the Federal
17 Rules of Civil Procedure, and hereby waives any objection based thereon.

18 19. Defendant waives service of the Final Judgment and agrees that entry
20 of the Final Judgment by the Court and filing with the Clerk of the Court will
21 constitute notice to Defendant of its terms and conditions. Defendant further
22 agrees to provide counsel for the Commission, within thirty days after the Final
23 Judgment is filed with the Clerk of the Court, with an affidavit or declaration
24 stating that Defendant has received and read a copy of the Final Judgment.

25 26. 10. Consistent with 17 C.F.R. 202.5(f), this Consent resolves only the

1 claims asserted against Defendant in this civil proceeding. Defendant
2 acknowledges that no promise or representation has been made by the Commission
3 or any member, officer, employee, agent, or representative of the Commission with
4 regard to any criminal liability that may have arisen or may arise from the facts
5 underlying this action or immunity from any such criminal liability. Defendant
6 waives any claim of Double Jeopardy based upon the settlement of this proceeding,
7 including the imposition of any remedy or civil penalty herein. Defendant further
8 acknowledges that the Court's entry of a permanent injunction may have collateral
9 consequences under federal or state law and the rules and regulations of self-
10 regulatory organizations, licensing boards, and other regulatory organizations.
11 Such collateral consequences include, but are not limited to, a statutory
12 disqualification with respect to membership or participation in, or association with
13 a member of, a self-regulatory organization. This statutory disqualification has
14 consequences that are separate from any sanction imposed in an administrative
15 proceeding. In addition, in any disciplinary proceeding before the Commission
16 based on the entry of the injunction in this action, Defendant understands that he
17 shall not be permitted to contest the factual allegations of the complaint in this
18 action.

23 11. Defendant understands and agrees to comply with the Commission's
24 policy "not to permit a defendant or respondent to consent to a judgment or order
25 that imposes a sanction while denying the allegation in the complaint or order for
26

1 proceedings." 17 C.F.R. § 202.5. In compliance with this policy, Defendant
2 agrees: (i) not to take any action or to make or permit to be made any public
3 statement denying, directly or indirectly, any allegation in the complaint or
4 creating the impression that the complaint is without factual basis; and (ii) that
5 upon the filing of this Consent, Defendant hereby withdraws any papers filed in
6 this action to the extent that they deny any allegation in the complaint. If
7 Defendant breaches this agreement, the Commission may petition the Court to
8 vacate the Final Judgment and restore this action to its active docket. Nothing in
9 this paragraph affects Defendant's: (i) testimonial obligations; or (ii) right to take
10 legal or factual positions in litigation or other legal proceedings in which the
11
12 Commission is not a party.

14 12. Defendant hereby waives any rights under the Equal Access to Justice
15 Act, the Small Business Regulatory Enforcement Fairness Act of 1996, or any
16 other provision of law to seek from the United States, or any agency, or any
17 official of the United States acting in his or her official capacity, directly or
18 indirectly, reimbursement of attorney's fees or other fees, expenses, or costs
19 expended by Defendant to defend against this action. For these purposes,
20
21 Defendant agrees that Defendant is not the prevailing party in this action since the
22 parties have reached a good faith settlement.

24 13. In connection with this action and any related judicial or
25 administrative proceeding or investigation commenced by the Commission or to
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1 which the Commission is a party, Defendant (i) agrees to appear and be
2 interviewed by Commission staff at such times and places as the staff requests
3 upon reasonable notice; (ii) will accept service by mail or facsimile transmission of
4 notices or subpoenas issued by the Commission for documents or testimony at
5 depositions, hearings, or trials, or in connection with any related investigation by
6 Commission staff; (iii) appoints Defendant's undersigned attorney as agent to
7 receive service of such notices and subpoenas; (iv) with respect to such notices and
8 subpoenas, waives the territorial limits on service contained in Rule 45 of the
9 Federal Rules of Civil Procedure and any applicable local rules, provided that the
10 party requesting the testimony reimburses Defendant's travel, lodging, and
11 subsistence expenses at the then-prevailing U.S. Government per diem rates; and (v)
12 consents to personal jurisdiction over Defendant in any United States District
13 Court for purposes of enforcing any such subpoena.
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15 14. Defendant agrees that the Commission may present the Final
16 Judgment to the Court for signature and entry without further notice.
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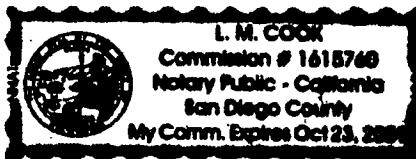
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2 15. Defendant agrees that this Court shall retain jurisdiction over this
3 matter for the purpose of enforcing the terms of the Final Judgment.
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5 Dated: April 8, 2008
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8
9 GORDON C. BIGLER

Gordon C. Bigler

10 On _____, 2008, _____, a person known
11 to me, personally appeared before me and acknowledged executing the foregoing
12 Consent.
13



15 *L. M. COOK*, notary public
16 Notary Public
17 Commission expires:
18

19 Approved as to form:
20

21 *Edward S. Gelfand*
22 Edward S. Gelfand, Esq.
23 Gartenberg Gelfand Wasson & Selden LLP
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